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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

No. 241

LIEBMANN BREWERIES, INC.,

*Petitioner,*

*vs.*

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, UPA PICTURES, INC., UPA ENTERPRISES and COLUMBIA PICTURES CORPORATION,

*Respondents.*

**Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.**

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, UPA PICTURES, INC., UPA ENTERPRISES and COLUMBIA PICTURES CORPORATION,

*Respondents.*

## Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

The Petitioner prays that a Writ of Certiorari issue to review the Order of the District Court of Appeal of the State of California, Second Appellate District, made and entered on or about June 1, 1959, denying a Petition for Writ of Mandate without opinion and without the issuance of an Alternative Writ or Order to Show Cause in Case No. 23820 entitled "Liebmann Breweries, Inc., Petitioner, vs. The Superior Court of the State of California in and for the County of Los Angeles, Respondent; UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Real Parties in Interest." The

Petition for Writ of Mandate was an original proceeding to compel the Superior Court of the State of California in and for the County of Los Angeles to Quash Service of Summons upon Petitioner on the ground that the Court had no jurisdiction over Petitioner, a New York corporation. The denial of the Petition finally decided that the California courts had jurisdiction over Petitioner. It thus deprived Petitioner of due process of law contrary to the Fourteenth Amendment to the United States Constitution.

The said District Court of Appeal has certified that the following Federal question was presented to and determined adversely to the Petitioner by the said court:

> "Whether the assertion by the California courts of jurisdiction over said Petitioner deprived said Petitioner of due process of law contrary to the Fourteenth Amendment to the United States Constitution where Petitioner is a foreign corporation which has never done business in California, which has no contacts with the State of California, which was being sued in the courts of California on a cause of action not arising in California, and the purported service on which was not made on any officer or agent of said Petitioner, but was made upon the California Secretary of State, and a copy of the Summons and pleading was sent by registered mail to Petitioner in New York." (Appendix B, *infra.*)

A timely Petition for Hearing by the Supreme Court of the State of California was denied.

## Citations to Opinions Below.

The Order of the said District Court of Appeal denying the Petition for Writ of Mandate is without opinion and is unreported except that the Minutes thereof denying said Petition for Writ of Mandate are reported at 170 A. C. A., No. 5, page 3 of the Minutes of said Court.

The Order of the Supreme Court of the State of California denying a Petition for Hearing after denial of Petition for Writ of Mandate by the said District Court of Appeal was made and entered on July 1, 1959, and is unreported except that the Minutes thereof are reported at 52 A. C., No. 10, page 3 of the Minutes of said Court.

## Jurisdiction.

Petitioner, a New York corporation, made its motion in the Superior Court of the State of California in and for the County of Los Angeles to Quash the purported Service of Summons upon it on the ground said Court had no jurisdiction *in personam* over it. (Cal. Code Civ Proc., Sec. 416.1.) That Motion was denied by the said Superior Court by an Order made and entered on or about April 3, 1959. No appeal lying from said Order, Petitioner filed a Petition for Writ of Mandate in the District Court of Appeal, Second Appellate District, State of California, pursuant to the California Code of Civil Procedure, Section 416.3. That Petition was denied by an Order of Court made and entered on June 1, 1959, without opinion and without the issuance of an Alternative Writ or an Order to Show Cause. Thereafter the Petitioner petitioned the Supreme Court of the State of California for a hearing, which Petition was denied without Opinion by an Order of the said Supreme Court on

or about July 1, 1959, which Order thereupon became final. (Rules on Appeal for the Supreme Court and District Court of Appeal of the State of California, Rules 24(a), 27(a) and 28(a)(b). Reprinted in Appendix A herein.) The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, subsection (3), since the decision of the said District Court of Appeal was the final judgment of the highest Court in California in which a decision could be had on the questions raised in the original proceedings brought by the Petition for Writ of Mandate. (*Gospel Army v. City of Los Angeles*, 331 U. S. 543 (1947); *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8 (1931); *American Railway Express Co. v. Levee*, 263 U. S. 19 (1923).)

The Federal question sought to be reviewed was raised in the said Superior Court by the Petitioner moving to Quash Service of Summons upon it on the grounds that the said Court had no jurisdiction over Petitioner, a foreign corporation.

The Federal question sought to be reviewed here was then raised in the original proceedings on the Petition for Writ of Mandate in Paragraph X of the Petition for Writ of Mandate wherein Petitioner stated that the Writ should be granted and the Superior Court should be ordered to Quash Service of Summons on Petitioner because:

> "The attempt to obtain jurisdiction over the Petitioner by service of process on the Secretary of State of the State of California, which is not authorized by Petitioner to accept service of process for or on its behalf, is a deprivation of Petitioner's rights to due process of law, contrary to the provisions of the Fourteenth Amendment to the United States Constitution. . . ."

The Federal question sought to be reviewed here was similarly expressly raised in the Petition for Hearing by the Supreme Court of the State of California.

The District Court of Appeal has so certified and the Certificate is annexed hereto in Appendix B.

Each of the California courts necessarily passed upon the Federal question, review of which is sought here, by denying relief to the Petitioner and holding Petitioner subject to the jurisdiction of the California Courts.

## Question Presented.

Whether the assertion by a State court of jurisdiction over a foreign corporation deprived it of due process of law contrary to the Fourteenth Amendment to the United States Constitution where it is a foreign corporation which never has done business in the State, which had no contacts with the State, which was being sued on a cause of action not arising in that State, and the purported service of the Summons and pleadings on which was not made on any officer or agent of the foreign corporation.

## Statutes Involved.

The statutory provisions involved are California Code of Civil Procedure, Sections 411(2), 416.1, 416.2 and 416.3, and California Corporations Code, Sections 6301, 6403, and 6500 to 6504, inclusive. They are appended in Appendix A, *infra*.

## Statement.

### 1. Statement of Proceedings.

The Respondents, other than the Superior Court, who are the Plaintiffs in Case No. 698923 in the Superior Court of the State of California in and for the County

of Los Angeles have commenced an action against, among others, your Petitioner, Liebmann Breweries, Inc. They have attempted to effect a service of Summons and Complaint in the Superior Court case upon the Petitioner, which had no employees or agents in California, and which has not designated any agent to accept service of process in California, by serving the Secretary of State.

Liebmann Breweries, Inc., appearing specially, moved to Set Aside the Order for Service of Process upon the Secretary of State and to Quash the purported Service of Summons.

Upon hearing of the said Motion the said Superior Court made its Order denying the Motion of your Petitioner.

Your Petitioner did, therefore, commence in the District Court of Appeal, Second Appellate District, State of California, an original proceeding by filing its verified Petition for Writ of Mandate to compel the said Superior Court to set aside the said Order for Service of Process upon the Secretary of State and to Quash the purported Service of Summons. The Petition contained as Exhibits A through G thereto the Amended Complaint in the case, the Order for Service of Process, the Stipulation Extending Time, the Notice of Motion to Quash, the Affidavit and Supplemental Affidavit of Walter H. Liebman, and the Declaration of Frank E. Delano. The Respondents conceded the truth of all the facts stated in the verified Petition by failing to file an answer to it (*Western States Construction Co. v. Municipal Court of the City and County of San Francisco*, 38 Cal. 2d 146, 283 P. 2d 502 (1952), and also conceded its sufficiency by failing to demur thereto. (*Goldman v. Superior Court*, 124 Cal. App. 2d 165, 166, 268 P. 2d 134 (1954).)

On June 1, 1959, the said District Court of Appeal, Second Appellate District, State of California, denied the Petition for Writ of Mandate without an Opinion and without Issuance of an Alternative Writ or Order to Show Cause.

On June 10, 1959, Petitioner filed in the Supreme Court of the State of California a Petition for Hearing by the Supreme Court to which no Answer was filed by Respondents. The Petition was denied on July 1, 1959.

**2. Statement of Facts.**

The following Statement of Facts is set forth in the verified Petition for Writ of Mandate and since no answer or demurrer was filed by Respondents must be taken as true:

Liebmann Breweries, Inc., is a New York corporation. It is in the business of brewing and selling beer and other malt beverages and the by-products thereof in the New York and New England area. In order so to do, Liebmann Breweries, Inc., carries a license to manufacture and sell beer in, among other states, the State of New York. Liebmann Breweries, Inc., does not now, nor did it at any of the times stated in the Amended Complaint herein ("Exhibit A" to the Petition for Writ of Mandate, Appendix B attached hereto) nor at the time of the purported service of Summons apply for, or hold, a license to manufacture, sell, or import beer or alcoholic beverages in the State of California. (Pars. 4-7, Exhibit E to the Petition for Writ of Mandate, Appendix B attached hereto.)

Liebmann Breweries, Inc., does not now nor did it at any of the times stated in the Amended Complaint herein ("Exhibit A" to the Petition for Writ of Mandate, Ap-

pendix B attached hereto) nor at the time of the purported service of process, solicit the sale, or advertise the sale, of its beer or products in the State of California. It had no and has no salesmen or officers or employees engaged in carrying on any business in the State of California. It had no and has no inventory in the State of California. It did not and does not import beer into the State of California. It had no and has no offices in California. (Pars. 8-9 of Exhibit E and Par. 8 of Exhibit F to the Petition for Writ of Mandate. Appendix B attached hereto.)

The corporate activities of Liebmann Breweries, Inc., are carried on at its principal office at 36 Forrest Street, Brooklyn 6, New York. The officers and directors of Liebmann Breweries, Inc., reside either in the State of New York or close to the New York metropolitan area. They neither reside in, nor do they carry on any business in, the State of California. (Pars. 4-5 of Exhibit E to the Petition for Writ of Mandate. Appendix B attached hereto.)

Liebmann Breweries, Inc., has never filed its Articles of Incorporation with the Secretary of State of the State of California, or with the County Clerk of any County of the State of California. It has never filed any statements in the manner and form of California Corporations Code, Section 6403, with the Secretary of State of the State of California, nor has it ever designated any agent for the service of process in the State of California. (Par. 10 of Exhibit E to the Petition for Writ of Mandate. Appendix B attached hereto.)

Liebmann Breweries, Inc., has never paid nor does it have any liability to pay any corporate franchise tax, or sales tax, or use tax, or real property tax, or personal

property tax, in or to the State of California. (Pars. 10 and 14 of Exhibit E to the Petition for Writ of Mandate. Appendix B attached hereto.)

Liebmann Breweries, Inc., is not, and never has been, in the business of producing television spot commercials in the State of California, nor the supervision of television spot commercials in the State of California. It has never engaged in the State of California in the business of causing television commercials to be viewed by the public in the State of California for the purpose of promoting the sale of Rheingold Beer in the State of California. (Par. 15 of Exhibit E to the Petition for Writ of Mandate. Appendix B attached hereto.)

Liebmann Breweries, Inc., has never entered into any contract with the Plaintiffs, nor has anyone on behalf of Liebmann Breweries, Inc., entered into any contracts with the Plaintiffs for the licensing of Liebmann Breweries, Inc., to use a fanciful character named Mr. Magoo in television spot commercials or otherwise for the purpose of advertising the sale of Rheingold Beers in the State of California or elsewhere. (Par. 11 of Exhibit E, Pars. 7-10 of Exhibit F and Pars. 1-9 of Exhibit G to the Petition for Writ of Mandate. Appendix B attached hereto.)

Rheingold Brewing Company was originally incorporated under and pursuant to the laws of the State of California on June 2, 1933, under the name of Rex Brewing Company. Thereafter, on July 23, 1933, its name was changed to California Brewing Association of Southern California. On March 29, 1935, its name was changed to Acme Brewing Company, and on March 9, 1954, to Rheingold Brewing Company, Los Angeles, Subsidiary of Liebmann Breweries, Inc., N. Y.

Prior to 1954, Rheingold Brewing Company, under the name of Acme Brewing Company, conducted an extensive business of manufacturing, distributing, and selling beer in the State of California, principally under the label of Acme Beer. (Par. 11 of Exhibit F to the Petition for Writ of Mandate. Appendix B attached hereto.)

In 1954 the stock of certain corporations which owned the stock of Acme Brewing Company was sold with the result that ultimately Liebmann Breweries, Inc., owned approximately five-sixths (5/6) of the stock of Continental Holding Corporation, which in turn owned a majority of the stock of the corporations owning the stock of Rheingold Brewing Company. Approximately one-sixth (1/6) of the stock of Continental Holding Corporation is owned by Bohemian Distributing Company, a California corporation. None of the stockholders of Bohemian Distributing Company are stockholders of Liebmann Breweries, Inc., nor are any of the stockholders of Liebmann Breweries, Inc., stockholders of Bohemian Distributing Company. (Par. 11 of Exhibit F to the Petition for Writ of Mandate. Appendix B attached hereto.)

The existence of Rheingold Brewing Company under its former corporate names antedates by eleven years the purchase by Liebmann Breweries, Inc., of any interest in any corporation which owned stock in corporations owning stock in Rheingold Brewing Company. Rheingold Brewing Company was not, therefore, created, nor does it exist, nor has it ever existed as a means or device for Liebmann Breweries, Inc., to do business in the State of California. It was and is a separate corporation. (Par. 12 of Exhibit F to the Petition for Writ of Mandate. Appendix B attached hereto.)

Rheingold Brewing Company maintains separate books and records, a separate office, and has its own stockholders, officers and directors. Rheingold Brewing Company handles its own purchases and sales and has always conducted itself as a separate corporation, maintaining its separate corporate existence as an entity apart from Liebmann Breweries, Inc. (Par. 13 of Exhibit F to Petition for Writ of Mandate. Appendix B attached hereto.)

During the course of the original negotiations in connection with the licensing of the character Mr. Magoo, Liebmann Breweries, Inc., negotiated in the State of New York for the right to use the character Mr. Magoo in advertising Liebmann Breweries, Inc.'s products in the New York area. Such discussions, commencing in September, 1955, were continued during the months of October and November, 1955. Drafts of the proposed contracts were prepared and are appended as Exhibits 1 and 2 to the Supplemental Affidavit of Water H. Liebman. ("Exhibit F" to the Petition for Writ of Mandate. Appendix B attached hereto.) They should be compared with Exhibits A, A-1 and C to the Amended Complaint herein. (Exhibit A to the Petition for Writ of Mandate. Appendix B attached hereto.)

Neither Liebmann Breweries, Inc., nor any person, firm or corporation on its behalf ever entered into any contract with the Plaintiffs in any manner whatsoever for any purposes whatsoever. (Par. 7 of Exhibit F to the Petition for Writ of Mandate. Appendix B attached hereto.)

In June, 1956, further discussions and negotiations were undertaken by representatives of Liebmann Breweries, Inc., and representatives of the Plaintiffs for the right to

license and produce television films of Mr. Magoo for commercial purposes in the New York area to advertise the product of Liebmann Breweries, Inc. Again, drafts of proposed agreements were prepared. They are attached as Exhibits 3, 4 and 5 to the Supplemental Affidavit of Walter H. Liebman. ("Exhibit F" to the Petition for Writ of Mandate. (Appendix B attached hereto.) They should be read in light of the executed Exhibits A, A-1, B and C to the Amended Complaint herein. "Exhibit A" to the Petition for Writ of Mandate. Appendix B attached hereto.) The proposed agreements were never executed, although Exhibit B to the Amended Complaint was executed and limited the licensed area to California and the city of Yuma, Arizona.

Through an inadvertence, the name Liebmann Breweries, Inc., which had been included in the drafts of the agreements when they had contemplated the licensing for use in the New York area, was left on the finally executed agreements. It is clear that this was an inadvertence, not only from the Affidavits, but also from the contracts. Paragraph 1 of Exhibit A to the Amended Complaint ("Exhibit A" to the Petition for Writ of Mandate. Appendix B attached hereto) limits the license to use the cartoon character for the purpose of "advertising, publicizing, and promoting Client, its products and services, in the territory hereinafter specified, over television only in connection with programs sponsored in whole or in part by Client . . . ."

Thus, when Liebmann Breweries, Inc.'s marketing territory was eliminated from the contract, it was no longer a "Client" within the contemplation of the agreement, since it could not advertise itself or its products or services in California or Arizona. Its name was left on only

through inadvertence. Liebmann Breweries, Inc., was not a party to any of the agreements. (Pars. 2-7 of Exhibit F and Pars. 2-9 of Exhibit G to the Petition for Writ of Mandate. Appendix B attached hereto.)

The attempt to serve Liebmann Breweries, Inc., is illegal, invalid and unconstitutional by reason of the fact the Liebmann Breweries, Inc., is not doing and never has done business in the State of California. Therefore, the attempt to obtain jurisdiction over Liebmann Breweries, Inc., is a deprivation of due process contrary to the Fourteenth Amendment to the United States Constitution.

## Reasons for Granting the Writ.

1. **The Decision of the District Court of Appeal of the State of California, Second Appellate District, Below in the Instant Case Which Deprived the Petitioner of Due Process of Law Contrary to the Fourteenth Amendment to the United States Constitution Is Inconsistent With the Pertinent Decisions of the United States Supreme Court and the United States Courts of Appeals Holding That a Foreign Corporation, Not Doing Business in the Forum and Having No Contacts With the Forum, Which Is Being Sued on a Cause of Action Not Arising in the Forum, and Purported Service on Which Was Not Made on Any Agent or Representative of the Foreign Corporation, Is Not Subject to the Jurisdiction of the State Courts of the Forum.**

The verified Petition for Writ of Mandate below sets forth the undisputed facts. This Honorable Court will ascertain for itself the facts disclosed by the record. (*Consolidated Textile Corp. v. Gregory*, 287 U. S. 85, 86 (1933).)

Nowhere does the record show, that the Petitioner was doing business in California or had any contacts with

California at the time of purported service upon it by serving the California Secretary of State with the Summons and Complaint in the Superior Court action or that the cause of action arose in California. It is a Federal constitutional requirement to the assertion of jurisdiction that these facts be proved. (*Consolidated Textile Corp., v. Gregory supra.*) The representatives of the foreign corporation must be carrying on the jurisdictional activities in the forum at the time of the purported service of Summons. (*Perkins v. Benquet Consolidated Mining Co.*, 342 U. S. 437, 444-445 (1952); *International Shoe Co. v. Washington*, 326 U. S. 310 (1945).)

But Petitioner neither sold its products, nor purchased any goods or services, nor carried on any corporate activity in California.

The record is utterly devoid of any facts to show the doing of business by Petitioner in California at the time of the purported service of Summons upon it. Petitioner, therefore, is not and could not be subject to the jurisdiction of the courts of the State of California. (*Chipman v. Jeffery Co.*, 251 U. S. 373 (1920).)

Even if Petitioner entered into a contract with said Respondents, the contract would not be sufficient to warrant the inference that it is present for the purpose of jurisdiction, since that factor alone does not provide a sufficient contact to overcome requirements of due process.

*Rosenberg Bros. & Co. v. Curtis-Brown Co.*, 260 U. S. 516 (1923).

Petitioner owned the majority of stock in a California corporation which in turn owned the stock of another California corporation, the separate corporate identities of each of the corporations having been carefully preserved. The subsidiary was in business for many years before its stock was indirectly acquired by Petitioner. Such ownership of stock could not justify the assertion of jurisdiction over Petitioner.

This Honorable Court has conclusively determined that a State or Federal Court does not have jurisdiction over a foreign corporation because it has a domestic subsidiary.

*Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U. S. 333 (1925);

*Consolidated Textile Corp. v. Gregory*, 289 U. S. 85, 88 (1933);

*Peterson v. Chicago, R. I. & P. R. Co.*, 205 U. S. 364 (1907);

*Philadelphia & Reading Railway Co. v. McKibbin*, 243 U. S. 264 (1917).

The reasoning of this Court in establishing the rule is found in the language of *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U. S. 333, at pages 336-337:

> "The question is simply whether the corporate separation carefully maintained must be ignored in determining the existence of jurisdiction. The defendant wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself did not choose to enter the state in its corporate capacity. It might have conducted such

> business through an independent agency without subjecting itself to the jurisdiction . . . It preferred to employ a subsidiary corporation. Congress has not provided that a corporation of one state shall be amenable to suit in the Federal Court of another state in which the plaintiff resides whenever it employs a subsidiary corporation as the instrumentality for doing business therein . . . That such use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction was settled . . . In the case at bar the identity of interest may have been more complete and the exercise of control over the subsidiary more intimate than in the three cases cited, but that fact has, in the absence of an applicable statute, no legal significance. The corporate separation, though perhaps merely formal, was real. It was not pure fiction."

The California Court below has, in effect, held that there is no limitation on the assertion of jurisdiction over foreign corporations. That there is a constitutional limitation upon the scope of the jurisdiction asserted by State courts over foreign corporations has been recently clearly enunciated by the United States Supreme Court. In *Hanson v. Denckla*, 357 U. S. 235 at pages 250-251 (1958), the Court, after pointing out the trend of less rigid requirements for personal jurisdiction over nonresidents, stated:

> "But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of state courts. See *Vanderbilt v. Vanderbilt*, 354 U. S. 416, 418. Those restrictions

are more than a guaranty of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him."

The doctrine of *Cannon* has been consistently followed by the Federal Courts, including the Court of Appeals for the Ninth Circuit.

See:

*Gravely Motor Plow & Cultivator Co. v. H. V. Carter Co.*, 193 F. 2d 158 (C. A. 9, 1951);

*Selbert v. Lancaster Chocolate & Caramel Co.*, 23 F. 2d 233 (C. A. 6, 1928);

*Berkman v. Ann Lewis Shops, Inc.*, 246 F. 2d 44 (C. A. 2, 1957);

*Harris v. Deere & Co.*, 233 F. 2d 161 (C. A. 4, 1955);

*Berghold v. Hudson Motor Car Co.*, 124 Fed. Supp. 716 (D. Minn., 1954);

*Hudson Minneapolis, Inc. v. Hudson Motor Car Co.*, 124 Fed. Supp. 720 (D. Minn., 1954);

*Moorehead v. Curtis Publishing Company*, 43 Fed. Supp. 67 (D. Ky., 1942).

**2. This Honorable Court Should Issue Its Writ of Certiorari Directed to the District Court of Appeal of the State of California, Second Appellate District, Because the Question Presented Is of Importance to the National Economy in Determining the Jurisdiction of State Courts Over Foreign Corporations.**

This Honorable Court has heretofore considered the importance of sound laws governing flow of commerce between the states. At the same time this Court has upheld the constitutional restrictions on the assertion of jurisdiction by state courts over foreign corporations or foreign residents contrary to the provisions of the Fourteenth Amendment to the United States Constitution. (*Hanson v. Denckla*, 357 U. S. 235, 250-251 (1958).)

In keeping with the restrictions on the assertion of jurisdiction by state courts over foreign corporations repeatedly enunciated by this Honorable Court, many corporations of one state have purchased the stock of corporations of other states.

It will now come as a rude shock to these corporations that their indirect interests in foreign subsidiaries will mean that for the purposes of service of process and assertion of jurisdiction by the courts of other states over them they are subject to the jurisdiction of the courts of the other state although not doing business in these states. The result can be the dissipation of the incentive and the eagerness with which foreign enterprises approach the purchasing of interests in the businesses of other states and the establishment of foreign subsidiaries, and the stream of capital between businesses in various states may be dried up. Thus the questions presented to this Court are not only important questions of law, but are important from a practical and economic standpoint, and should be given a full hearing by this Honorable Court.

This attempted assertion of jurisdiction over Petitioner by the Courts of California is contrary to the clear and unequivocal opinion in the decisions in the Supreme Court of the United States and the lower Federal Courts.

It is therefore clear that on the facts in the record which were presented to the Honorable Court below, the Honorable District Court of Appeal of the State of California has failed to follow the decisions of this Honorable United States Supreme Court and the United States Court of Appeals, and therefore has deprived Petitioner of due process of law which has been afforded other foreign corporations. It is necessary therefore not only as an important question of constitutional law but also because of the effect of the ruling on business practices now widely carried on throughout the United States that uniformity of decision be maintained and that the erroneous Order of the District Court of Appeal of the State of California should be reversed.

## Conclusion.

For the foregoing reasons, it is respectfully submitted:

1. This Petition for Certiorari should be granted.
2. This case should be set down for argument.
3. An Order should be issued which would preserve the *status quo* to protect Petitioner from irreparable injury staying all proceedings in the Superior Court of the State of California pending a final decision by this Honorable Court.

Respectfully submitted,

LEON M. COOPER,

WALTER H. LIEBMAN,

By LEON M. COOPER,

*Counsel for Petitioner.*

## APPENDIX A.

### Pertinent Statutes Involved.

"The summons must be served by delivering a copy thereof as follows . . .

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business in this State; in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code."

*Code of Civil Procedure*, Section 411, Subsection 2.

"(*Notice of Motion to quash service of summons on ground of lack of jurisdiction: Contents of notice: Extension of time for moving party to plead to complaint or cross-complaint.*)

Any defendant or cross-defendant upon whom service of summons has been made may serve and file, on or before the last day on which he is required to plead, or within such further time as the court may for good cause allow, a notice of motion to quash the service of summons, upon the ground of lack of jurisdiction of the court over him. The notice shall designate as the time of making such motion a date not more than 10 days following the filing of such notice of motion. In the event of the service and filing of such motion, the time of the moving party to plead to the complaint or cross-complaint shall be extended, and no default may be entered against him, until the expiration of 10 days following service upon him of written notice of entry of an order of the court denying the motion. Upon good cause being shown, the court may extend the latter 10-day period for an ad-

ditional period not exceeding 20 days. Neither an application to the court by any defendant or cross-defendant for an extension of time within which to plead, nor the granting of such extension nor entering into a stipulation of the parties for such extension, shall constitute a general appearance by said defendant or cross-defendant."

*Code of Civil Procedure*, Section 416.1

"(*Same: Effect of motion under §416.1 and motion for relief under §473: Motion not constituting general appearance.*)

If a defendant or cross-defendant moves to quash service of summons in the manner provided in Section 416.1 of this code, and also moves for relief under Section 473 of this code, the latter motion shall not constitute a general appearance by the moving party."

*Code of Civil Procedure*, Section 416.2.

"(*Same: Procedure on denial of motion: Petition to appellate court for writ of mandate requiring entry of order quashing service: Notice of petition: Extension of time to plead.*)

If a motion of a defendant or cross-defendant to quash service of summons, as provided in Section 416.1 of this code, is denied by the court, he may, before pleading, and within 10 days after service upon him of written notice of the order of the court denying the motion, or within such additional time not exceeding 20 days as the court may allow, petition an appropriate appellate court for a writ of mandate directed to the court wherein the action or proceeding is pending requiring the entry of its order quashing the service of summons. If he shall thereupon serve upon the adverse party and file

with the clerk of the latter court a notice that he has petitioned for such writ of mandate, his time to plead shall be extended, and no default may be entered against him, for a period of 10 days following written notice of the final judgment in the mandamus proceeding, which time for goood cause may be extended by the court for an additional period of not to exceed 20 days."

*Code of Civil Procedure,* Section 416.3

"*Foreign corporations with subsidiaries engaged in intrastate business.* This part does not apply to a foreign corporation merely because a subsidiary corporation owned or controlled by it is engaged in the transaction of intrastate business in this State."

*Corporations Code,* Section 6301.

"*Filing statement with Secretary of State: Contents.* A foreign corporation shall not transact intrastate business in this State until it has also filed with the Secretary of State a statement setting forth all of the following:

(a) The location and address of its main office.

(b) The location and address of its principal office within this State.

(c) The name of an agent upon whom process directed to the corporation may be served within this State. The agent may be a natural person residing within the State in which case his complete business or residence address shall be set forth, or it may be a domestic corporation which has filed the certificate provided for in Section 3301.5 or a foreign corporation which has filed the certificate provided for in Section 6403.5. If a corporate agent be designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village

wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6.

(d) Its irrevocable consent to service of process directed to it upon the agent designated, and to service of process on the Secretary of State if the agent so designated or the agent's successor is no longer authorized to act or cannot be found at the address given."

*Corporations Code,* Section 6403.

"*What constitutes valid service on corporations: Evidence of appointment of agent for service of process.* Delivery by hand of a copy of any process against a foreign corporation (a) to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, the general manager in this State, or if the corporation be a bank to a cashier or an assistant cashier, (b) to any natural person designated by it as agent for the service of process, or (c), if the corporation has designated a corporate agent, at the office of such corporate agent in the city, town or village named in the statement filed by the corporation pursuant to Section 6403 to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5, if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 6403.6, shall constitute valid service on the corporation.

A copy of the designation, certified by the Secretary of State, is sufficient evidence of the appointment of an agent for the service of process."

*Corporations Code,* Section 6500.

"*Order for service on Secretary of State.* If the agent designated for the service of process be a natural person and cannot be found with due diligence at the address stated in the designation or if such agent be a corporation and no person can be found with due diligence to whom the delivery authorized by Section 6500 may be made for the purpose of delivery to such corporate agent, or if the agent designated is no longer authorized to act, or if no agent has been designated and if no one of the officers or agents of the corporation specified in Section 6500 can be found after diligent search and it is so shown by affidavit to the satisfaction of the court or judge, then the court or judge may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, except that if the corporation to be served has not filed the statement required to be filed by Section 6403 then only one copy of the process and order need be delivered but the order shall include and set forth an address to which such process shall be sent by the Secretary of State."

*Corporations Code*, Section 6501.

"*Duty of Secretary of State to give notice to corporation of service of process: Manner of giving notice.* Upon receipt of the process and order and his fee therefor the Secretary of State forthwith shall give notice to the corporation of the service of the process by forwarding by registered air mail, charges prepaid, with request for return receipt, a copy of the process and order to the address specified in the order if the corporation has not filed the statement required by Section 6403,

otherwise to the two offices of the corporation the addresses of which are set forth in such statement or in statements subsequently filed."

*Corporations Code*, Section 6502.

"*Time to appear; Record of process: Certificate of Secretary of State as evidence.* The corporation shall appear within thirty days after delivery of the process to the Secretary of State. The Secretary of State shall keep a record of all process served upon him and shall record therein the time of service and his action in respect thereto. The certificate of the Secretary of State, under his official seal, certifying to the receipt of process, the giving of notice thereof to the corporation, and the forwarding of such process, pursuant to this chapter, shall be competent and *prima facie* evidence of the matters stated therein."

*Corporations Code*, Section 6503.

"*Service of process where foreign corporation has withdrawn from business: Surrender of right to transact intrastate business.* A foreign corporation which has transacted intrastate business in this State and has thereafter withdrawn from business in this State may be served with process in the manner provided in this chapter in any action brought in this State arising out of such business, whether or not it has ever complied with the requirement of Chapter 3 of this part.

If a foreign corporation has surrendered its right to transact intrastate business pursuant to Chapter 6 of this part, process against it delivered to the Secretary of State, his assistant or a deputy pursuant to Chapter 4 in any action upon a liability or obligation incurred within the State prior to such surrender shall be mailed in the

manner prescribed in Chapter 4 except that the Secretary of State shall send the copy of the process to the address set forth in the certificate of surrender."

*Corporations Code*, Section 6504.

"(*When decisions become final*). All decisions of the reviewing courts shall be filed with the clerk. A decision of the Supreme Court becomes final 30 days after filing unless a shorter time is ordered prior to the expiration of said 30 day period. A decision of a District Court of Appeal becomes final as to that court 30 days after filing, except that the denial without opinion of a petition for a writ within its original jurisdiction without issuance of an alernative writ or order to show cause becomes final as to that court immediately after filing. When a decision of a District Court of Appeal is final as to said court, it is not thereafter subject to modification or hearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein beings to run anew, as of the date of modification."

*Rules of California Supreme Court and District Court of Appeal*, Rule 24(a).

"(*Power to grant rehearing*). The Supreme Court or a District Court of Appeal may grant a rehearing after its own decision in any cause except the denial without opinion by a District Court of Appeal of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause. Any cause pending in a department of the Supreme Court may be ordered

heard by the Supreme Court in bank. A rehearing or hearing in bank may be granted on petition, as provided in subdivision (b) of this rule, or on the court's own motion prior to but not after the time the decision becomes final therein."

*Rules of California Supreme Court and District Court of Appeal*, Rule 27(a).

"(a) (*Time within which court may grant hearing*). Within 30 days after a decision of a District Court of Appeal becomes final as to that court, the Supreme Court, on its own motion, or on petition, may order the cause transferred to itself for hearing and decision.

(b) (*Time for filing petition*). A party seeking a hearing must serve and file a petition therefor within 10 days after the decision of the District Court of Appeal becomes final as to that court. An original and 17 copies of a printed petition or an original and 10 copies of a typewritten petition shall be filed, with proof of delivery of 3 copies of a printed petition or one copy of a typewritten petition to the clerk of the District Court of Appeal which rendered the decision. When such copies are delivered to the clerk of the District Court of Appeal, he shall forthwith transmit to the clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause. If the petition is denied, the clerk of the Supreme Court shall return them to the clerk of the proper District Court of Appeal. If the petition is granted, they shall be retained and properly numbered by the clerk of the Supreme Court."

*Rules of California Supreme Court and District Court of Appeal*, Rules 28(a) and 28(b).